

Colin Yeo

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(FOI)Home Office Ref: 20234

Date: 17th October 2011

Dear Mr Yeo,

Thank you for your e-mail of 6th October in which you have asked for release of the detailed guidance issued to UKBA staff concerning the Ruiz Zambrano judgment, including any information on what evidence of dependency might be considered adequate by UKBA.

Your request has been handled as a request for information under the Freedom of Information (Fol) Act 2000.

I am able to disclose the information set out in the enclosed Annex.

The document you have requested contains personal information and has therefore been redacted. The general policy of the Home Office is not to disclose, to a third party, personal information about another person. This is because we have obligations under the Data Protection Act and in law generally to protect this information. Your request has been considered in line with our obligations under the Fol Act. However, we have concluded that part of the information you have requested is exempt from disclosure under section 40(2) of the Fol Act. This exempts personal data if disclosure would breach any of the data protection principles

In keeping with the Freedom of Information Act, we assume that all information can be released to the public unless it is exempt. In line with normal practice we are therefore releasing the information which you requested via the Home Office website.

I hope that this information meets your requirements. I would like to assure you that we have provided you with all relevant information that the Home Office holds.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference 20234. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team
Home Office
Ground Floor, Seacole Building
2 Marsham Street
London SW1P 4DF
e-mail: FOIRequests@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

S Bryant
Policy Manager
European Operational Policy Team
North West Region
UK Border Agency

Annex

Freedom of Information request from Colin Yeo (reference 20234)

Information requested

Release of the detailed guidance issued to UKBA staff concerning the *Ruiz Zambrano* judgment

Response: Attached policy notice

From: European Operational Policy Team

Subject: Implementation of *Ruiz Zambrano* judgment

Date: 16 September 2011

Issue number: 13/2011

Purpose of Notice

1. This instruction provides interim guidance for all UK Border Agency staff dealing with third country nationals claiming to have acquired a right of residence in the UK on the basis of the Court of Justice of the European Union (ECJ) case of *Ruiz Zambrano* (C-34/09).

A. Background

2. The judgment in the case of *Ruiz Zambrano* established that member states are precluded from refusing a third country national, upon whom a Union citizen is dependent, a right to reside and work in the Member State of residence and nationality of that Union citizen when refusing residence would deprive the Union citizen of the genuine enjoyment of the substance of their European citizenship rights. In practice this means that refusal of the right of residence to the third country national, and so their removal, would require the Union citizen to leave the Member state by virtue of their dependency upon that third country national.
3. This right is derived from Article 20 of the Treaty on the Functioning of the European Union (TFEU) and not from Directive 2004/38/EC ("the Free Movement Directive") which has been transposed into legislation via the Immigration (European Economic Area) Regulations 2006 ("the Regulations").
4. There is currently no provision within the Regulations to issue documentation on the basis of the *Ruiz Zambrano* judgment. Amendments to the Regulations are expected to be progressed before close 2011. However, until such time as these changes have been effected, UKBA officials must make decisions in accordance with this instruction where a right to residence is claimed by an applicant/appellant on the basis of the *Ruiz Zambrano* judgment.

B. Scope

5. The UK Border Agency has considered the implications of the *Ruiz Zambrano* judgment and the effect of this on the rights of third country nationals with a dependent Union citizen. The following high-level scope has been agreed with Ministers following detailed consultation with legal advisors and Counsel and should be applied by all business areas of the Agency until substantive changes to the Regulations can be effected.
6. Firstly, it has been agreed that the judgment applies **only** to cases in which the dependent Union citizen is within their state of nationality. For the United Kingdom, this means that the judgment applies **only** to cases involving a dependent British citizen.
7. Secondly, it has been agreed that the judgment does **not** apply in cases where dependency is simply financial.
8. On this basis there are then two classes of potential beneficiary:
 - A third country national adult upon whom a British citizen child is dependent
 - A third country national adult upon whom a British citizen adult is dependent

Third country national adults upon whom a British citizen child is dependent

9. In practice, the majority of cases are likely to come within this category and so will involve a British citizen child who is dependent upon a third country national parent. In order for an applicant/appellant to demonstrate that they are a potential beneficiary within this category then the following criteria need to be met:
 - there is evidence that the child is under the age of 18, and
 - there is evidence that the child is a British citizen, and
 - there is evidence of a relationship between the child and the parent/guardian/carer, and
 - there is evidence of the child's dependency on the third country national parent/guardian/carer (care responsibilities, court orders are examples)
10. In cases where there is another parent/guardian/carer upon whom the child is, or can become, dependent then this would fall out of scope. This is because removal of the third country national in such circumstances would not oblige the child to leave the EU because an alternative carer is available.

Third country national adults upon whom a British citizen adult is dependent

11. In relation to this category of applicant/appellant clear medical evidence, for example of a severe physical and/or mental disability, supported by (a) evidence which shows the adult British citizen is wholly dependent upon the third country national for their care and (b) evidence that no alternative care is available. Such cases are likely to be rare and will require consideration on an individual basis.

12. This high-level scope will be further developed before amendments to the Regulations are progressed to then enable documentation to be acquired by those falling within scope of the *Ruiz Zambrano* judgment. This will in turn lead to further and more detailed guidance being issued which will expand the agreed high-level scope.

Applying the Agreed High-Level Scope

C. Applications for documentation made before arrival in the UK

13. There is currently no provision to issue a person an EEA family permit under the Regulations as a result of the *Ruiz Zambrano* judgment. Unless a person qualifies under another capacity, either under the Regulations or under the Immigration Rules, then until the Regulations are changed they can not be issued with documentation enabling them to travel.

D. Applications for documentation made after-entry to the UK

14. Applications made after entry for documentation to confirm a right to reside in the UK on the basis of the *Ruiz Zambrano* judgment should be made to the European Caseworking team. Where an application is considered to potentially come within the agreed high-level scope of the judgment (as outlined in section B of this instruction), then these must be accepted into the business and held until changes to the Regulations have been made which will make provision for the Agency to issue formal documentation.
15. A certificate of application (COA) must be issued in such cases to enable the third country national to reside and work in the UK whilst a substantive consideration of their claimed right is pending.
16. Applications which do not potentially fall within the scope must be rejected at the Front End Sift.
17. Additional guidance will be issued to operational staff by European Casework managers on the process to be followed in these cases.

E. Removal and Enforcement

18. Appellants subject to administrative removal action who potentially meet the scope of *Ruiz Zambrano* should have any removal action suspended until a substantive decision can be made in their case following finalisation of UKBA guidance on the judgment. This is because a substantive decision can not be made until outstanding considerations have been progressed, including determining when it would be proportionate to remove a third country national falling within the agreed scope of the judgement.
19. However, appellants subject to deportation action should **not** have any deportation action suspended. The right to reside and work established under the *Ruiz Zambrano* judgment is not derived from the Free Movement Directive. This means that applicants who assert a right to reside in accordance with this judgment can not rely on the greater protection against removal provided for by the Directive when facing deportation action. This therefore means that even where a person potentially comes

within the scope of *Ruiz Zambrano* in accordance with section B above that they can still be deported where their presence in the UK is not in the public interest.

20. Cases where the third country national adult meets the criteria for deportation will be dealt with by the Criminal Casework Directorate. For further information on which cases meet the CCD criteria see the link: [When to refer a case to Criminal casework directorate \(CCD\)](#).

Any policy enquiries on this notice should be addressed to

Head of European Operational Policy

